

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of)	
)	
Administration of the North American)	CC Docket No. 99-200
Numbering Plan)	
)	
RNK, Inc.)	
Petition For Limited Waiver of)	
Section 52.15(g)(2)(i) of the)	
Commission's Rules Regarding)	
Numbering Resources)	

PETITION FOR LIMITED WAIVER

RNK, Inc. d/b/a RNK Telecom ("RNK") hereby respectfully requests that the Wireline Competition Bureau ("Bureau") of the Federal Communications Commission (the "Commission"), grant RNK a limited waiver of Section 52.15(g)(2)(i) rules to allow RNK to obtain numbering resources directly from the North American Numbering Plan Administrator ("NANPA") and/or the Pooling Administrator ("PA"). RNK intends to use these numbering resources in deploying IP-enabled services, including Voice over Internet Protocol ("VoIP") services, on a commercial basis to residential and business customers.

I. INTRODUCTION

RNK, a small, privately-held company, based in Dedham, Massachusetts was initially founded in 1992 and has grown from its initial niche of providing prepaid long distance calling cards to an Integrated Communications Provider, marketing local and interexchange telecommunications services, as well as Internet Services and IP-enabled services, (e.g., VoIP voice services over broadband). RNK is a certified Competitive Local Exchange Carrier

(“CLEC”) in the states of Massachusetts, Rhode Island, New York, Florida, New Jersey, New Hampshire, and Connecticut offering residential and business telecommunications services via resale and through its own facilities. In addition, RNK has interexchange (“IXC”) authority in Vermont, Florida, and Maine, as well as international §214 authority from the Federal Communications Commission (“FCC” or “Commission”).

At the beginning of 2004, RNK launched its RNKVoIP™ suite of bundled local, long distance, and international calling to business and residential consumers, as well as extending wholesale opportunities for ISPs, cable television (“CATV”) companies, and DSL providers. As its customer base has expanded from beyond New England, RNK has targeted a nationwide consumer market and wholesaler network. RNK’s products are designed to be broadband-provider-independent, as RNK does not, generally, sell xDSL or other broadband links. Rather, RNK give consumers an independent choice, and the ability to “one-stop-shop” for telecommunications, with a variety of pre- and post-paid local, long distance, and international calling products.

RNK’s success is dependent on our quick response to market change and consumer demand. RNK’s future competitiveness and ability to offer innovative and affordable products to a nationwide market in a timely and cost-effective manner offer depends, in large part, on the relief sought herein.

II. BACKGROUND

A. DIRECT ACCESS TO NUMBERING RESOURCES IS NECESSARY

Currently, when RNK—and similarly-situated providers of IP-enabled services¹--desire to provide, as part of their offerings, the ability to receive calls from stations on the PSTN, they must assign their customers standard North American Numbering Plan (“NANP”) telephone numbers. In certain instances, RNK has been able to self-provision telephone numbers to VoIP customers where it had existing wireline service offerings, was a certified CLEC, and had deployed interconnection facilities with the incumbent LEC.² When looking to expand its IP-enabled service footprint, RNK is (and has been) confronted with the following choices to obtain numbering resources: (1) similar to SBC Internet Services Inc. (“SBCIS”)³ and others, RNK is/was forced to purchase ISDN-PRI services from other CLECs, often with onerous restrictions on number portability, types of traffic allowed, and pricing significantly higher than the incremental cost of self-provisioning numbers; or (2) pursuing the arduous and lengthy process to gain state certification in every potential state where RNK desires to provide IP-enabled services.

As discussed below, the latter of these options would produce an anomalous result where RNK, and similarly-situated carriers, such as Vonage, would be subject to a “patchwork” of state regulations applying to local telephone service,⁴ while providing an interstate service subject to the exclusive regulatory oversight of this Commission.⁵ This was not the outcome envisioned by

¹ In this Petition, we use the term “IP-enabled services” and “VoIP services” interchangeably to collectively refer to RNK’s broadband voice services. *See also, IP-Enabled Services*, WC Docket No. 04-36, *Notice of Proposed Rulemaking*, 19 FCC Rcd 4863 (2004) (“*IP-Enabled Services NPRM*”) at ¶1, fn 1.

² RNK has done so in Massachusetts, New Hampshire, Rhode Island, and in New York (LATA 132).

³ See, for example, *In the Matter of Administration of the North American Numbering Plan, Order*, FCC 05-20, CC Docket No. 99-200, FCC 05-20 (Feb. 1, 2005)(“SBCIS Waiver Order”) at ¶5. Hereafter, for the sake of clarity, we will refer to the SBC IP-enabled affiliates individually and collectively as “SBCIS”.

⁴ *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, Memorandum Opinion and Order (“MO&O”)*, WC Docket No. 03-211, FCC 04-267 (released November 12, 2004, hereinafter, “Vonage Order”) at ¶32, “Indeed, the practical inseverability of other types of IP-enabled services having basic characteristics similar to DigitalVoice would likewise preclude state regulation...and counsels against patchwork regulation.”

⁵ *Ibid* at ¶32, “...we would preempt state regulation to an extent comparable to what we have done in this Order.”

this Commission in its orders in the *IP-Enabled Services NPRM*⁶, nor was it that of Congress in the enactment of the Telecommunications Act.

The former method of market entry, using existing carriers' access to numbers and transport, is as burdensome as becoming a carrier in each state, as borne out by RNK's nearly year-long foray into the retail and wholesale VoIP market place, and as argued by SBCIS in its successful similar petition for waiver. When obtaining "numbers" from other CLECs, VoIP providers are required to buy ISDN-PRI trunk services, with multiple DID station numbers or similar services. This occurs because CLECs—as well as their wireless and ILEC counterparts—do not own their assigned numbers⁷, and consequently cannot "sell" those numbers independent of telecommunications services as a stand-alone commodity⁸ without risking their carrier certifications. Therefore, even when it is inefficient from the standpoint of network design, VoIP providers are put in the position of ordering transmission facilities for the purpose of obtaining numbers, rather than for efficient interconnection. While this may seem beneficial from the perspective of certain wholesale CLECs, it imposes unnecessary costs on IP-enabled service providers, which inevitably will be borne by consumers of IP-enabled services.

These pseudo-"Wireless Type 1"⁹ arrangements have other negative effects for consumers (or potential consumers) of IP-enabled Services, especially with respect to local number portability (LNP). First, since VoIP carriers cannot obtain numbering resources directly, they cannot obtain Location Routing Numbers ("LRNs"), which leaves them without the technical ability to directly port-in (i.e., numbers *from* other wireline or wireless carriers) or port-out (i.e., transferring a telephone number *to* another service provider) numbers. Indeed, RNK is

⁶ *Ibid.*

⁷ *CO Code Assignment Guidelines*, INC 95-0407-008 (rev. January 24, 2003) at §2.1. This document is available at <<http://www.atis.org>>.

⁸ *Ibid.* See also *CO Code Assignment Guidelines*, at fn 7.

⁹ SBC Waiver Order at ¶6

fortunate that in some states, RNK *is* in fact a certified carrier with access to numbers. In those instances, if a customer wishes to migrate her number from her current wireless or wireline carrier to RNK's VoIP services, RNK can place an order with that carrier to port the number to the appropriate one of RNK's (in its capacity as a LEC) LRNs. Similarly, if a customer is either dissatisfied with RNK's VoIP service, moves, or simply desires to use another provider, RNK are able to port the number directly to the customer's carrier of choice.

However, when a VoIP provider buys, *at retail*, ISDN-PRI or DID numbers, the VoIP provider itself, and not the individual VoIP end users, is the "customer of record" with respect to those telephone numbers, which makes porting on behalf of a VoIP end user difficult if not impossible. This is because the facilities-based LEC does not, under penalty of violating this Commission's slamming rules¹⁰, have the authority to port numbers merely upon the request of the end user, who is not the "customer of record." Further, in many instances and for several reasons, including keeping an end-user VoIP customer captive, the actual "customer of record," the VoIP provider, lacks incentive to give such authorization. In part, this is because no self-interested economic entity would voluntarily allow one of its customers to easily leave it for one of its competitors. More importantly, however, if the customer happens to be from a rural area or some other area with a "desirable" telephone number, the VoIP provider might feel justified in "capturing" that number for reuse in its inventory, regardless of the inconvenience on their departing customer, and in direct contravention of the spirit of the FCC's numbering rules, which prevent carriers from "hoarding" numbers, especially those in scarce supply. Allowing VoIP providers to obtain numbering resources directly from the Central Office Code Administrator and/or the Pooling Administrator (where required) would reduce the likelihood of such behavior,

¹⁰ See, 47 CFR 64.1100 *et seq.*

that while “technically” permissible, is inconsistent with the Commission’s overall policy toward number portability¹¹.

B. 47 C.F.R. §52.15(g)(2)(i)

Under the Commission’s rules, only state-certified carriers may apply for numbering resources.¹² Applicants seeking numbering resources must be “authorized to provide service in the area for which the numbering resources will be used.”¹³ The Commission has been clear in its interpretation of 47 C.F.R. §52.15(g)(2)(i) as requiring a numbering resources applicant to be certified as a “carrier” when seeking such resources. Not only has the Commission consistently referred to “carriers” when referring to applicants for numbering resources, but it has also determined that “...carriers must provide, as part of their applications for initial numbering resources, evidence (*e.g.*, state commission order or state certificate to operate as a carrier) demonstrating that they are licensed and/or certified to provide service in the area in which they seek numbering resource¹⁴.” The Commission has also ruled that “The burden is on the carrier to demonstrate that it is both authorized and prepared to provide service before receiving initial numbering resources.”¹⁵

While RNK is currently certified as a facilities-based CLEC in seven (7) U.S. states¹⁶ in which it can provide traditional telecommunications services and, pursuant to the Commission’s rules, apply for numbering resources, there remain forty-three (43) states in which RNK would need to become certified as a common carrier in order to obtain direct access to numbering

¹¹ Although RNK does not itself engage in such tactics, it is not inconceivable that other VoIP providers do engage in such behavior, which is why they allow numbers to be “ported-in” but not “ported-out”

¹² 47 C.F.R. §52.15(g)(2)(i)

¹³ *Ibid.*

¹⁴ In the Matter of Numbering Resource Optimization, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, FCC 00-104 2000) (“NRO Order”)¶97

¹⁵ *Ibid.*

¹⁶ See fn. 2, *supra*.

resources for its VoIP service. Entry certification and tariff filing requirements are substantial, and impose significant delay on a competitive service provider's efforts at market entry.

Unlike with traditional telecommunications services, the Commission specifically preempted state regulation of the IP-enabled service offered by Vonage Holding Corporation finding that "there was no practical way to sever Vonage's VoIP service into interstate and intrastate communications....." The Commission made it clear that like IP-enabled services would not be subject to traditional state public utility regulation.¹⁷

RNK offers a variety of IP-enabled services through its RNKVoIP™ division. To require RNK to comply with 47 C.F.R. §52.15(g)(2)(i) to obtain numbers in order to provide its RNKVoIP™ service would directly conflict not only with the Commission's view that IP-enabled services should remain "...largely free of government regulation..." but also with Congress's directive that the United States shall "promote the continued development of the Internet" and "encourage the deployment" of advanced telecommunications capabilities¹⁸. As such, and for the reasons set forth herein, RNK requests that the Bureau grant a limited waiver of 47 C.F.R. §52.15(g)(2)(i) to allow RNK to apply numbering resources, specifically for the provision of IP-enabled services, without having to become a certified common carrier in every state in the United States.

C. SBC INTERNET SERVICES, INC.'S ("SBCIS") REQUEST FOR TEMPORARY AUTHORITY AND PETITION FOR WAIVER, AND THE RESULTING COMMISSION ORDERS

¹⁷ *Vonage Order*, at ¶¶31-32: ".....the practical inseparability of other types of IP-enabled services having basic characteristics similar to Digital Voice would likewise preclude state regulation to the same extent described herein."

¹⁸ 47 U.S.C. 230(b)(1)

On May 28, 2004, SBCIS requested Special Temporary Authority (“STA”) from this Commission to receive numbering resources directly from either the Numbering Administrator or Pooling Administrator for use in a limited trial of VoIP services in several geographically dispersed rate centers.¹⁹ In its request, SBCIS argued that to grant its STA request would be in the public interest²⁰, because it would further the Commission’s stated policy goals of fostering innovation by “allow[ing] SBCIS to develop innovative [and] new VoIP services.”²¹

The Commission agreed with SBCIS, and on June 16, 2004, the Commission granted its STA request, which allowed SBCIS to obtain up to ten 1,000 blocks directly from the PA for its limited, non-commercial trial of VoIP services²². In granting the request, the Commission required SBCIS to comply with Part 52²³ of the Commission’s rules. Further, the Commission noted that its grant of authority was “without prejudice to any Commission action that may be taken in the future.”²⁴

In early July, 2004, based on the projected success of its service trial, SBCIS requested a “limited waiver” of 47 CFR §52.15(g)(2)(i)²⁵ in order that it may provide its VoIP services to end-users²⁶. In its request, SBCIS stated that granting its petition, which would allow it to obtain numbering resources directly from the NA or PA, would serve the public interest, foster efficient use of numbering resources, allow for innovation and growth of VoIP and attendant services, and

¹⁹ See Letter to William F. Maher, Jr., Chief, Wireline Competition Bureau, Federal Communications Commission, from Gary Phillips, General Attorney & Assistant General Counsel, SBC Telecommunications, Inc. (May 28, 2004) (hereinafter, “Phillips Letter”), p. 1.

²⁰ Phillips Letter, p. 4

²¹ Ibid, p. 5

²² *In the Matter of Administration of the North American Numbering Plan, Order*, CC Docket No. 99-200, 19 FCC Rcd 10708 (2004)(“SBCIS STA Order”).

²³ SBCIS STA Order at ¶5.

²⁴ Ibid at ¶6

²⁵ See note 14, *supra*. This is precisely the rule from which RNK requests its waiver.

²⁶ See *SBC IP Communications, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Access to Numbering Resources*, filed July 7, 2004 (“SBCIS Waiver Petition”).

promote efficient interconnection between VoIP providers and LECs²⁷. Further, SBCIS asked that its waiver be limited in breadth (i.e., that the numbers it would seek pursuant to the waiver would be used solely for the provision of VoIP services, last only until the Commission adopted final rules on the subject, and that its waiver be conditioned upon “full[] compl[iance] with all existing Commission numbering resource requirements,²⁸” including, but not limited to, that SBCIS would meet the “facilities readiness” requirement of Part 52.

On February 2, 2005, after receiving comment from both industry parties and state governmental agencies, the FCC issued an Order²⁹ granting SBCIS' waiver. It declared that granting SBCIS' waiver of the “certification requirement” rule was in the public interest in that it allowed SBCIS to “deploy[] IP-enabled services, including Voice over Internet Protocol (VoIP) services, on a commercial basis to residential and business customers³⁰.” The Commission found that SBCIS—much like wireless carriers in the infancy of that industry—were forced into inefficient interconnection arrangements due to the need to partner with LECs in order to obtain numbers, absent relief³¹. It further found that granting the waiver was in the public interest, insofar as it furthered the Commission's goal of deploying broadband and other advanced services. However, the Commission did condition such approval on SBCIS' compliance with the Commission's other numbering requirements. Specifically, SBCIS was required to: (1) comply with the Commission's directives regarding number utilization, forecasting, and pooling³²; (2) notify both the FCC and relevant state commission 30 days prior to submitting a request for numbering resources³³; (3) process porting requests “directly” as opposed to through

²⁷ *SBCIS Waiver Petition* pgs 1-2

²⁸ *Ibid* at p. 10

²⁹ *SBCIS Waiver Order*, at ¶1

³⁰ *Ibid*, at ¶1, ¶4

³¹ *Ibid*, at ¶6

³² *Ibid* at ¶9

³³ *Ibid*.

a LEC³⁴; (4) comply with the “facilities readiness” requirement by requiring a state-approved interconnection agreement between it and the applicable incumbent LEC, or equivalent services ordered via an approved tariff³⁵; and (5) comply with any other obligations the Commission may impose in its *IP-Enabled Services* proceeding³⁶.

Given these conditions, the Commission ruled that SBCIS met its burden for showing “good cause” in support of its waiver request³⁷. The Commission also found that to the extent other entities sought waivers under similar circumstances, that it would grant comparable relief.³⁸

III. DISCUSSION

A. AS FOUND IN FCC 05-20, THERE IS “GOOD CAUSE” FOR THE COMMISSION TO GRANT RNK A LIMITED WAIVER OF 47 C.F.R. §52.15(g)(2)(i)

The Commission has the authority to waive its rules if there is "good cause" to do so under Section 1.3 of the Commission's Rules³⁹. The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest, and where special circumstances warrant a deviation from the rules, which deviation serves the public interest.⁴⁰ In considering whether to grant a waiver, the Commission should take into account issues of hardship, equity, or more effective implementation of overall policy.⁴¹

The very purpose of the Telecommunications Act of 1996 is “[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications

³⁴ Ibid.

³⁵ Ibid at ¶10

³⁶ Ibid at ¶11

³⁷ Ibid at ¶4

³⁸ Ibid at ¶¶4, 11

³⁹ 47 CFR §1.3

⁴⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁴¹ See *WAIT Radio*, 418 F.2d at 1159.

technologies.”⁴² In fact, in Section 706 of the Act, Congress requires both this Commission and state commissions to encourage the deployment of advanced telecommunication capabilities to all Americans within a reasonable timeframe.⁴³ With regard to IP-enabled services, specifically, the Commission has referred to such services as “innovative” and as having “a profound and beneficial impact on American consumers.”⁴⁴ The Commission has further stated that IP-enabled services have increased economic productivity and growth, and it has recognized that VoIP, in particular, “will encourage consumers to demand more broadband connections, which will foster the development of more IP-enabled services.”⁴⁵

As stated *supra*, the Commission recently granted a similar Petition for Limited Waiver filed by SBCIS. Specifically, the Commission found that allowing SBCIS to obtain numbers on its own, a deviation from the Commission’s requirement that a numbering resources applicant be certified as a common carrier to obtain numbers, would encourage the use of IP-enabled services that interconnect with the PSTN, thereby facilitating rapid deployment of new technology to American consumers.⁴⁶

The Commission has acknowledged the very real constraints associated with efforts to obtain entry certification as a common carrier, noting that certification and tariffing requirements stall entry of a service into the marketplace, thereby preventing a provider’s ability to respond to consumer demands.⁴⁷ The Commission has also expressed its goal that carriers should have

⁴² 1996 Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996).

⁴³ 1996 Telecommunications Act of 1996 at §706(a)

⁴⁴ *In the Matter of Vonage Holdings Corporation*, WC Docket No. 03-211 at ¶ 43.

⁴⁵ *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4865 (2004) (*IP-Enabled Services NPRM*)

⁴⁶ See *SBCIS Waiver Order*, ¶¶4,6, citing *IP-Enabled Services NPRM*, 19 FCC Rcd at 4865 (recognizing the paramount importance of encouraging deployment of broadband infrastructure to the American people).

⁴⁷ See *Vonage Order* at ¶ 20. (“The administrative process involved in entry certification and tariff filing requirements, alone, introduces substantial delay in time-to-market and ability to respond to changing consumer demands, not to mention the impact these processes have on how an entity subject to such requirements provides its services”).

ready access to numbering resources in order to effectively compete in the rapidly changing telecommunications market.⁴⁸ In this case, the ability of IP-enabled service providers to obtain numbers for the limited purpose of provision of their VoIP services should be a similar goal. If the Commission were to require RNK to strictly comply with the Commission's numbering rules, thereby leaving RNK with no choice but to take steps towards achieving entry certification in 43 other U.S. states, RNK would be unable to provide its IP-enabled services to consumers nationwide for an undetermined period of time, assuming certification was ultimately granted in all cases. American consumers have expressed a need for IP-enabled services, and forestalling immediate deployment of such services would undermine the public interest.

In considering whether to grant a waiver, the Commission should evaluate issues of hardship, equity, or more effective implementation of overall policy.⁴⁹ Requiring IP-enabled service providers to become common carriers in each state before allowing direct access to numbering resources clearly rises to the level of hardship, as the Commission found in the SBCIS Waiver Order, and would serve as a barrier to entry of IP-enabled services into the marketplace⁵⁰. As to equity issues, the Commission further stated in the *SBCIS Waiver Order* that “[t]o the extent other entities seek similar relief we would grant such relief to an extent comparable to what we set forth in this Order⁵¹.” RNK is asking for comparable relief to that requested by SBCI in its Petition for Limited Relief and, should it not have the benefit of such relief, RNK would suffer an unfair competitive disadvantage when competing with SBCIS.

⁴⁸ NRO Order at ¶1

⁴⁹ See *WAIT Radio*, 418 F. 2d at 1159.

⁵⁰ See *Vonage Order* at ¶ 20. (“The administrative process involved in entry certification and tariff filing requirements, alone, introduces substantial delay in time-to-market and ability to respond to changing consumer demands, not to mention the impact these processes have on how an entity subject to such requirements provides its services”).

⁵¹ *SBCIS Waiver Order* at ¶4

Finally, with regard to an effective implementation of overall policy, a limited waiver of the common carrier requirement would ensure that the Commission's goals of serving the public interest with ready access to new and improved technologies would be accomplished, while at the same time addressing concerns associated with number resource optimization.

Because RNK's direct access to numbering resources will promote the efficient and cost-effective deployment of revolutionary IP-enabled to the public, thereby serving the public's interests with increased and immediate choices, the Bureau has good cause to grant RNK's Petition for Limited Waiver of 47 C.F.R. §52.15(g)(2)(i).

B. GRANTING THE INSTANT WAIVER, WITH CONDITIONS, IS IN ACCORD WITH THE COMMISSION'S NUMBERING RESOURCE OPTIMIZATION RULES

In addition to the "good cause" shown previously herein, conditioning approval of RNK's waiver petition on compliance with the Commission's other numbering rules, specifically, those of Part 52.15⁵² (other than that which RNK requests waiver) is in the public interest and will fulfill the Commission's statutory mandate to "to administer telecommunications numbering and to make such numbers available on an equitable basis."

RNK accepts the same numbering-related conditions that were imposed on SBCIS.⁵³ In fact, because—at least within its existing CLEC footprint—RNK has over five years' experience in compliance with these requirements⁵⁴ already, which is easily scalable in looking forward to new markets. RNK already has experienced staff familiar with industry norms and practices, as well as the regulatory requirements associated with using assigned numbers.

⁵² 47 USC 251(e)(1)

⁵³ SBCIS Waiver Order ¶¶8-11

⁵⁴ Ibid

Without going into a detailed discussion of each of the Commission’s general numbering requirements, RNK believes that at least one of them, the so-called “facilities-readiness” test, deserves further consideration in a VoIP context⁵⁵. By this rule, an applicant for initial numbering resources must, at a minimum, demonstrate that it “is or will be capable of providing service within sixty (60) days of the numbering resources activation date.” Earlier, in this proceeding, the Commission interpreted this rule to mean that applicants for numbering resources must show to the code administrator, or in more recent years, the pooling administrator, that it has business plans, interconnection agreements, or contracts for unbundled network elements, or equipment that equipment has been purchased.⁵⁶ In its SBCIS Waiver Order, the Commission extended this requirement to SBCIS, stating that it should submit “an interconnection agreement with the incumbent LEC that serves the geographic area in which the carrier proposes to operate.”⁵⁷ The Commission further clarified this by allowing SBCIS to submit proof of purchase of interconnection via a lawful and approved tariff.⁵⁸

RNK is not opposed to a similar condition on its grant of authority. However, RNK requests that the Commission make allowance by specifically allowing “indirect” as well as “direct” interconnection agreements with the incumbent LEC. Specifically, RNK envisions *direct* interconnection with one or more LECs in a given service area, with, if not provided directly, *indirect* interconnection with the incumbent LEC⁵⁹. Such an allowance would be consistent with the relevant statute, namely Section 251(a) of the Act, and also consistent with the treatment afforded CMRS carriers to indirectly interconnect, should they so choose. Although direct tandem-level interconnection is *desirable*, indirect interconnection should be

⁵⁵ 47 CFR §52.15(g)(2)(ii)

⁵⁶ NRO Order, at ¶97

⁵⁷ SBCIS Waiver Order at ¶10

⁵⁸ *Ibid.*

⁵⁹ 47 USC §251(a).

permitted to the extent that it is *functionally equivalent* to direct connection, and should be permitted so long as RNK presents sufficient evidence therein. Approval of RNK's request would be consistent with the evolution of interconnection methods and the Commission's encouragement of development of wholesale markets, as well as retail markets. Disapproval of indirect connection may mute the intent of the Commission's SBCIS Order to allow unfettered national expansion of IP services, and enhanced competition, by forcing IP-enabled providers to enter into Interconnection Agreements with ILECs, or potentially become CLECs, in order to be able to purchase wholesale interconnection facilities in each state in which the VoIP providers wish to do business.⁶⁰

Aside from that particular issue, it bears noting that in addition to RNK's *retail* offerings of IP-enabled services, RNK is also a *wholesaler* of such services. By granting RNK's petition, RNK would not only be able to procure numbering resources for its own end users, but it also could aggregate number utilization for smaller entities who desire to resell, RNK's VoIP products. Small ISPs may not have the resources or the customer base to, on their own, interconnect with LECs or buy "soft switch" or "gateway" facilities. Even if they could obtain numbering resources, depending on the geographic concentration of those smaller providers, it might result in inefficient use of numbering resources since that, in a pooling environment, the minimum number of telephone numbers that an entity can receive is 1,000. By allowing RNK (and similarly-situated entities) to obtain numbering resources directly, number demands can be aggregated among smaller resellers, thus promoting efficient use of the numbering resource. As

⁶⁰ Should RNK's request for approval to connect indirectly not be approved or be of such nature that the consideration of such issue would preclude the Commission from granting RNK's request for waiver, RNK would rather have the Commission grant RNK's waiver on grounds similar to those made by the Commission in its SBCIS Order and disregard or determine RNK's request for indirect connection at a later date.

a further result, the deployment of advanced services to smaller communities and rural areas would accelerate.

Although RNK agrees to comply with such requirements *as if* it were a “telecommunications carrier,” RNK does not wish to prejudice any position it may take—or any finding this Commission may make—with respect to whether the services in question are “telecommunications services” or “information services.” We understand the *spirit* and *purpose* of the rules we discuss here, and we commit to abide by those, irrespective of what determinations the Commission may make in its *IP-Enabled Proceeding*.⁶¹

C. GRANTING THE WAIVER WILL NOT PREDETERMINE ISSUES RAISED IN THE COMMISSION’S ONGOING IP-ENABLED SERVICES PROCEEDING

In its Petition, RNK is requesting a limited waiver of the Commission rules, to last only until such time as the Commission adopts its final rules in the *IP-enabled Services* proceeding. Granting RNK’s waiver request will in no way prejudice the outcome of the IP-enabled Services proceeding and, once final rules are adopted, RNK will take any steps necessary to comply with the rules. The Commission has previously granted waivers of its rules while rulemaking proceedings were pending.⁶² Just recently, the Commission granted SBCIS request for waiver pending the outcome of the IP-Enabled Services proceeding⁶³ and, as RNK is asking for similar limited relief as that of SBCIS, RNK respectfully requests that the Commission grant RNK’s relief to the extent comparable to that set forth in FCC 05-20.

⁶¹ See III.C, *infra*, for further discussion.

⁶² *In the Matter of the North American Numbering Plan, FCC 05-20 at 7, citing Pacific Telesis Petition for Exemption from Customer Proprietary Network Information Notification Requirements, Order, DA 96-1878 (rel. Nov. 13, 1996).*

⁶³ *Id.*

D. THE BUREAU SHOULD GRANT RNK'S REQUESTED WAIVER ON AN EXPEDITED BASIS

The Commission has referred to IP-enabled services as “innovative,” “revolutionary” and as having “a profound and beneficial impact on American consumers.”⁶⁴ The Commission has further stated that IP-enabled services have “increased economic productivity and growth, and it has recognized that VoIP, in particular, will encourage consumers to demand more broadband connections, which will foster the development of more IP-enabled services.”⁶⁵

RNK is seeking a limited waiver of the Commission’s rules to remain in effect only until such time as it adopts final numbering rules in the *IP-Enabled Services* proceeding. The benefits to the public associated with an expedited granting of relief are significant in providing consumers with immediate access to cutting edge VoIP services. Therefore, in furtherance of its long held desire to afford consumers rapid access to new technologies, and in order to ensure that consumers will have choices within these new service offerings, the Bureau should grant RNK’s Petition for Limited Waiver on an expedited basis.

⁶⁴ *In the Matter of Vonage Holdings Corporation*, WC Docket No. 03-211 at ¶ 43.

⁶⁵ *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4865 (2004) (*IP-Enabled Services NPRM*)

III. CONCLUSION

For all of the reasons stated herein, RNK respectfully requests that the Bureau expeditiously grant its Petition for Limited Waiver of 47 C.F.R. §52.15(g)(2)(i) to allow RNK direct access to numbering resources for purposes of offering IP-enabled services.

Respectfully Submitted,

Richard N. Koch
President
RNK, Inc. d/b/a RNK Telecom